

HON. BRYAN FINUCANE C.J.

SIR JOSEPH CHISHOLM

Halifax

We have very little information touching the early life of the Honourable Bryan Finucane, the third Chief Justice of Nova Scotia, who filled that office from 1778 to 1785. We do know that he was born at Ennis, County Clare, Ireland, the son of Michael Finucane, but the exact date of his birth cannot now be ascertained because there exist no Ennis church records prior to 1744. He was no doubt born some time before 1744. He was a member of an influential Protestant family. The late Senator L. G. Power once told this writer that the surname was in all probability originally Finnigan; if so, the change in the name is likely synchronous with a change in social status and in religion. He was never a student in Trinity College, though he did study law in Dublin. In those days one who desired to be called to the Irish Bar was obliged to keep terms at one of the Inns of Court in London. This obligation, which was imposed by a statute of Henry VIII, was made permanent in the reign of Elizabeth and continued in effect as late as 1885 when the statute was repealed. In the records of the Honourable Society of the Middle Temple, there is the following entry of his admission to the Society:

2 Jan. 1759, Brian Finucane, eldest son of Michael Finucane, of Ennis, Co. Clare, Ireland, gent. decd.

He was called to the bar by the Middle Temple at the Easter Term 1764.

There is no information available to show what his activities were in the fourteen years following his admission to the Irish bar. Whatever his professional record may have been, he had sufficient influence to secure appointment in 1778 to be the Chief Justice of Nova Scotia and, on May 1st following his arrival in Halifax, he was sworn in as a member of His Majesty's Council in Nova Scotia under the King's mandamus. He became President of the Council and took his seat next to the Lieutenant-Governor. In 1783 he made a trip to England and upon his return the House of Assembly passed the following address:

The House of Assembly beg leave to congratulate you on your safe return to this Province, and at the same time to inform you that they have voted the sum of £400 to be paid you out of the Treasury towards defraying the expenses of your voyage.

Chief Justice Finucane died on August 3rd, 1785; at the time of his death his brother Andrew, who was a friend of Sir John

Moore of Corunna fame, was stationed in the garrison at Halifax. Andrew was military secretary to Brigadier Francis MacLean and Commissariat General in Halifax, and he was present at the capture of Penobscot, which was taken by troops under MacLean. The Nova Scotia Gazette and Weekly Chronicle of August 9th, 1785, notes the Chief Justice's death and burial in the following terms:

On Wednesday last at Two o'clock in the Morning Departed this Life, sincerely lamented by his numerous Friends and Acquaintances, the Honorable Bryan Finucane, Esq., Chief Justice of this Province, and President of the Honorable His Majesty's Council. He endured a painful and tedious illness with uncommon Fortitude, and met his fate with that easy Resignation which can only be manifested by a good man, he passed through the various Stations which he filled in Life with an unsullied Reputation, he was an upright Judge, an Honest Man, a warm Friend and an accomplished Gentleman, and in him the Province lost one of its best Advocates.

On Friday Evening his Remains were interred with every mark of Honor and Respect in a Vault prepared for the Purpose in St. Paul's Church.

From the papers in the Probate Court in Halifax it can be gathered that the Chief Justice was an active sportsman, a good liver, a liberal spender, and that in Nova Scotia he enjoyed, so far as local circumstances permitted, the activities and pleasures usually enjoyed by an Irish country gentleman. He kept a fine stable and an ample wine cellar and when he died he left behind him numerous debts. Having died intestate and insolvent, his chief creditor, the Hon. Thomas Cochrane, was appointed to administer his estate, although at the time his brother Andrew was in Halifax. Mr. Cochrane gave the usual administrator's bond, his sureties being Richard John Uniacke Jr., "the old attorney-general", and Charles Hill. The bond was in the sum of £500. His real estate and personal effects were soon ordered to be sold, as appears from the following notice of sale in the Nova Scotia Gazette of September 20th, 1785:

TO BE SOLD, BY PUBLIC AUCTION,

Upon the Premises, on Saturday the 1st, October next between the Hours of 12 and 2 o'clock. THE Dwelling House, late in the Occupation of Chief Justice FINUCANE deceased, in Water Street, together with the Outhouses, Garden, and Water Lott, thereto belonging, these Premises are in good repair, will be Sold Subject to Dower, or Annual Payment of one Third the Current Rents, during the natural Life of Mrs. REBECCA BURBIDGE, an Indisputable Title, and Immediate Possession will be given the Purchaser.

There was filed an inventory of the personal effects and a detailed report of the sale, which latter extends to eighteen pages

of foolscap. The names of the purchasers are also given; among them one named Gladstone and another named Balfour. Many of the most prominent men of the town appear on the list. The Lieutenant-Governor, for example, bought the contents of the wine cellar with its varieties of wine. The Chief Justice's horses were also sold. The net receipts from the sale were £990.0.0, while his liabilities amounted to about £1419.0.0, some of which represented doctor's bills and servants' wages. The balance due by the estate when all the personal property was realized was £429.13.5, which was looked after by Andrew Finucane, who gave a bond to Mr. Cochrane in the following terms:

I promise to restore the same or the value thereof to the said Thomas Cochrane, if the same or any part thereof shall be wanting to pay off the said Bryan Finucane's debts.

The Chief Justice was a fairly regular attendant at the meetings of Council, but there is not a line of his to be found in the way of a judicial opinion or speech.

DICKENS' EXPLANATION

The Serjeant tried to look gravely at the fire, but the smile came back again. "Gentlemen of your profession, sir," continued Mr. Pickwick, "see the worst side of human nature — all its disputes, all its ill-will and bad blood rise up before you. You know from your experience of juries (I mean no disparagement to you or them) how much depends on *effect*: and you are apt to attribute to others a desire to use, for purposes of deception and self-interest, the very instruments which you, in pure honesty and honour of purpose, and with a laudable desire to do your utmost for your client, know the temper and worth of so well, from constantly employing them yourselves. I really believe that to this circumstance may be attributed the vulgar but very general notion of your being, as a body, suspicious, distrustful and over-cautious . . ." (Charles Dickens: *The Posthumous Papers of the Pickwick Club*)